

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

TAVITA T.,
Appellant,

v.

DEPARTMENT OF CHILD SAFETY, D.T., AND P.S.,
Appellees.

No. 2 CA-JV 2018-0163
Filed November 19, 2018

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.

NOT FOR PUBLICATION

See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Civ. App. P. 28(a)(1), (f);
Ariz. R. P. Juv. Ct. 103(G).

Appeal from the Superior Court in Pima County
No. JD20160591
The Honorable Deborah Pratte, Judge Pro Tempore

AFFIRMED

COUNSEL

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Counsel for Appellant

Mark Brnovich, Arizona Attorney General
By Laura J. Huff, Assistant Attorney General, Tucson
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By Sybil Clarke
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MEMORANDUM DECISION

Judge Eppich authored the decision of the Court, in which Presiding Judge Vásquez and Judge Espinosa concurred.

E P P I C H, Judge:

¶1 Tavita T. challenges the juvenile court's order terminating her parental rights to D.T., born September 2004, and P.S., born March 2014, on time-in-care grounds. Her sole argument on appeal is that insufficient evidence supported the court's finding that termination was in the children's best interests. We affirm.

¶2 To sever a parent's rights, the juvenile court must find clear and convincing evidence establishing at least one statutory ground for termination and a preponderance of the evidence that shows terminating the parent's rights is in the child's best interests. *Alma S. v. Dep't of Child Safety*, 245 Ariz. 146, ¶ 8 (2018); *Kent K. v. Bobby M.*, 210 Ariz. 279, ¶¶ 32, 41 (2005); *see also* A.R.S. § 8-863(B). We do not reweigh the evidence on appeal; rather, we defer to the juvenile court with respect to its factual findings. *See Alma S.*, 245 Ariz. 146, ¶ 18. We will affirm the order if the findings upon which it is based are supported by reasonable evidence. *See id.* We view the evidence in the light most favorable to upholding the ruling. *See id.* ¶ 21.

¶3 The children were removed from Tavita's care in August 2016 and were found dependent as to her after she admitted allegations in a dependency petition. Because Tavita was only in "minimal compliance" with her case plan, the juvenile court in March 2018 changed the case plan from a concurrent plan of reunification and severance and adoption to only severance and adoption. The Department of Child Safety (DCS) then moved to terminate her parental rights on time-in-care grounds. After a contested severance hearing, the court granted that motion, concluding DCS had proven the grounds for termination by clear and convincing evidence and that termination was in the children's best interests.¹ As to

¹ The juvenile court also terminated the parental rights of the children's respective fathers. They are not parties to this appeal.

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best interests, the court found that the children's needs were being met by their current placement, they were adoptable and likely to be adopted, and "[i]t would be a detriment to the children if [they] were to linger in out of home placement waiting and waiting for their parents to come back to them and take care of them." This appeal followed.

¶4 "At the best-interests stage of the analysis, 'we can presume that the interests of the parent and child diverge because the court has already found the existence of one of the statutory grounds for termination by clear and convincing evidence.'" *Alma S.*, 245 Ariz. 146, ¶ 12 (quoting *Kent K.*, 210 Ariz. 279, ¶ 35). Thus, the juvenile court's focus must be on the child's interest instead of the parent's, and "[t]he 'child's interest in stability and security' must be the court's primary concern." *Id.* (quoting *Demetrius L. v. Joshlynn F.*, 239 Ariz. 1, ¶ 15 (2016)). Accordingly, "termination is in the child's best interests if either: (1) the child will benefit from severance; or (2) the child will be harmed if severance is denied." *Id.* ¶ 13. That a child's current placement is meeting the child's needs is a proper factor for the court to consider in determining a child's best interests. *See Audra T. v. Ariz. Dep't of Econ. Sec.*, 194 Ariz. 376, ¶ 5 (App. 1998). And, "[w]hen a current placement meets the child's needs and the child's prospective adoption is otherwise legally possible and likely, a juvenile court may find that termination of parental rights, so as to permit adoption, is in the child's best interests." *Demetrius L.*, 239 Ariz. 1, ¶ 12.

¶5 Tavita argues the evidence did not support the juvenile court's best-interests finding because neither child was in an adoptive placement at that time and, thus, DCS had not shown "a detriment . . . in continuing their relationship with [her]." But, as our supreme court has made clear, a child need not be in an adoptive placement for a court to find termination is in that child's best interests. *Id.*; *see also Alma S.*, 245 Ariz. 146, ¶ 14. Tavita has identified no error in the juvenile court's findings that the children's needs were being met and that they were adoptable and likely to be adopted. And, she ignores the court's finding that continuing the dependency was emotionally harmful to the children. *See Alma S.*, 245 Ariz. 146, ¶ 13. These findings are more than adequate to support the court's conclusion that termination was in the children's best interests.

¶6 We affirm the juvenile court's order terminating Tavita's parental rights to D.T. and P.S.